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IN THE

Supreme Court of the United States

October Term, 19....

No. 74-500

REMSCO ASSOCIATES INCORPORATED,
a New Jersey Corporation,
Petitioner,

v.

BEAVER FALLS MUNICIPAL AUTHORITY,
Respondents.

REPLY BRIEF TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

J. DAVID RAY,
EDWARD S. YOUNG,
RAY AND RAY,
700 Turnpike Street,
Beaver, Pa. 15009,
Attorneys for Respondents.

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REPLY BRIEF TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

1. The Petition for Writ of Certiorari in this case has not been filed within the time provided therefor. Such petition must be filed within 90 days after the judgment or decree appealed from, 28 USCA Section 2101 (c). The Supreme Court of Pennsylvania denied Remsco Associates Incorporated's petition for allowance of appeal on May 13, 1974. Subsequently, on June 17, 1974, Remsco filed a petition, *nunc pro tunc,* for reconsideration of its original petition for allowance of appeal. This was also denied. It is the Beaver Falls Municipal Authority's contention that the 90 day period

begins as of May 13, 1974 since the peition for reconsideration was not filed within the time limit (10 days) provided for by Rule 6 of the Supreme Court of Pennsylvania, which provides, in pertinent part, as follows: "A Petition for the Reconsideration of Denial of a Petition for the Allowance of an Appeal, from the Superior Court or the Commonwealth Court, together with eight (8) copies thereof, must be filed in the office of the Prothonotary, and a copy served upon all counsel in the case, within ten (10) days after the final order of denial, unless the Court upon cause shown shall extend the time." To hold otherwise would be to allow a petitioner to extend indefinitely the time within which to petition for a Writ of Certiorari by merely filing a petition for reconsideration of appeal, *nunc pro tunc,* in the court below.

2. The controversy in this case is one which has been decided pursuant to Pennsylvania law and which involves no question or issue arising under Federal law. This action was begun in the Court of Common Pleas of Beaver County, Pennsylvania when the petitioner, Remsco, filed a "Petition Under Arbitration Act of April 25, 1927, 5 Purdon Statutes Section 161 for a Rule & Order to Compel Performance of Agreement to Arbitrate.." (Appendix A) Thereafter, Remsco filed a "Petition for Order Directing Arbitration," wherein Pennsylvania statutory authority was again invoked (Appendix B). After the arbitrator's decision was reached, Remsco filed a brief in opposition to the Beaver Falls Municipal Authority's Petition for Modification of the Award. This brief contained, at page 2, the following language: "Respondents in the instant petition agree that the arbitration award herein is generally reviewable under the terms of the Act of 1927, April 25 P.L. 21 No. 248 Section 11 *et seq.*, 5 Purdons Statutes Section 171 *et seq.*" During none of these proceedings

did Remsco choose to refer to the Federal Arbitration Act (9 USCA Section 1 *et seq*).

Remsco now petitions for a Writ of Certiorari alleging that the Pennsylvania Supreme Court failed to consider a matter which was never before the court below. Remsco is asking that the United States Supreme Court undertake to review what the court below did not decide. This is not a matter which the Court should consider. Walters v. City of St. Louis, Missouri, 74 S. Ct. 505, 347 U.S. 231, 98 L. Ed. 660 (1954). Questions which are not raised in the trial court will not be considered on appeal. Union Paving Co. to use of U.S. Casualty Co. v. Thomas, 186 F2d 172 (C.A. Pa. 1951).

The controversy was submitted to the Pennsylvania Court by Remsco pursuant to Pennsylvania law and Remsco should not now be heard to say that another body of law should have been applied. The question here presented is one which was never presented in the trial court and which would not then be properly before your Honorable Court.

3. Accordingly, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

J. DAVID RAY,
EDWARD S. YOUNG,
RAY and RAY,
Attorneys for Respondent.

Appendix A—Petition Under Arbitration Act of April 25, 1927, 5 Purdons Statutes Section 161 for a Rule and Order to Compel Performance of Agreement to Arbitrate.

APPENDIX A.

PETITION UNDER ARBITRATION ACT OF APRIL 25, 1927, 5 PURDONS STATUTES SECTION 161 FOR A RULE AND ORDER TO COMPEL PERFORMANCE OF AGREEMENT TO ARBITRATE.

(Filed .....)

IN THE COURT OF COMMON PLEAS

of Beaver County, Pennsylvania

REMSCO ASSOCIATES INCORPORATED,
a New Jersey Corporation,

Petitioner,

vs.

BEAVER FALLS MUNICIPAL AUTHORITY,

Respondent.

Gen 154 1970
No. ..... of 1970

To the Honorable the Judges of Said Court:

The Petition of Remsco Associates, Incorporated, by its Attorneys Edward J. McClain and Rex Downie, Jr., respectfully represents:

Appendix A—Petition Under Arbitration Act of April 25, 1927, 5 Purdons Statutes Section 161 for a Rule and Order to Compel Performance of Agreement to Arbitrate.

1. Your Petitioner, Remsco Associates Incorporated, a New Jersey Corporation has its principal place of business at P. O. Box 176, Matawan, New Jersey.

2. Your Respondent, Beaver Falls Municipal Authority is a municipal corporation under the laws of Pennsylvania herein having its principal place of business at 1425—8th Avenue, Beaver Falls, Beaver County, Pennsylvania.

3. That on the 28th day of September 1967 Remsco Associates, Inc., a New Jersey Corporation and the above Respondent entered into a written agreement, the pertinent portions of which are annexed hereto marked Exhibit "A" and made a part hereof.

4. That the above mentioned portion provides:

> The Engineer's decision upon the amount, quality, acceptability and fitness of the work and materials shall be final and binding upon the Owner and Contractor. However, any dispute, claim, question or case involving extension of time or financial considerations if no agreement regarding such is reached, shall be referred to a Board of Arbitration composed of a representative of the Owner, a representative of the Contractor and a third representative agreed to by the first two representatives named. The discussion and award, if any, shall be final, binding and conclusive upon all parties without exception or appeal; and all right or rights of any action at law or in equity under or by virtue of this contract and all matters connected with it and relative thereto are hereby expressly waived. The arbitrators shall fix their

own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the proceedings upon either or both parties.

5. That a Complaint has arised between the parties to said contract, to-wit:

That the completion date set for Petitioners work under the terms of the subject contract was the 1st day of November, 1968 whereas the actual completion of petitioner's work was not done until the 1st day of August 1969, the overrun of ten months. This overrun was caused by the failure of performance and management by the Respondents named herein to the economic loss and damage of your Petitioner, to the amount of $70,000.00 Dollars.

6. That the above named Respondent was placed on demand by your plaintiff to proceed with Arbitration of the above named controversy by Petitioner's letter of November 12, 1969, a copy of which is annexed hereto as Exhibit "B".

7. That the above named Respondent has neglected, failed and refused to proceed to arbitration under the terms of the aforesaid covenant whereas your Petitioner has made repeated requests upon said Respondent through its counsel to submit to arbitration, and your Petitioner is ready and willing to proceed with arbitration pursuant to the covenant above set forth.

8. Your Petitioner has not defaulted in carrying out the arbitration covenant as set forth above.

Appendix A—Petition Under Arbitration Act of April 25, 1927, 5 Purdons Statutes Section 161 for a Rule and Order to Compel Performance of Agreement to Arbitrate.

WHEREFORE your Petitioner prays your Honorable Court to issue a Rule on the above named Respondents to show cause why they should not proceed in the manner and form provided for in the aforesaid Agreement.

REX DOWNIE, JR.,
Attorney for Petitioner.

RULE.

AND NOW, to-wit, this 29th day of January, 1970, upon consideration of the within Petition and Affidavit in support thereof and on Motion of Rex Downie, Jr., a Rule is issued on the above named Respondent to show cause why it should not proceed with Arbitration in the manner performed provided for the written Agreement. Service of the said Rule is to be made by Certified Mail at the principal place of business of the Respondents named above.

Rule returnable to the 18th day of February, 1970.

BY THE COURT:
JAMES E. ROWLEY, *J.*

Appendix A—Petition Under Arbitration Act of April 25, 1927, 5 Purdons Statutes Section 161 for a Rule and Order to Compel Performance of Agreement to Arbitrate.

ORDER.

AND NOW TO-WIT, this ..... day of ....., 1970, upon consideration of the within Petition, Answer and Depositions and hearing thereon, and after finding that the Arbitration Agreement was made as alleged and that Respondent has failed to arbitrate as therein provided.

IT IS ORDERED, ADJUDGED AND DECREED that Beaver Falls Municipal Authority proceed with arbitration in accordance with the manner and form provided in said written agreement and that the above named Respondent shall name its respective representative or representatives on or before the ..... day of ....., 1970 and that the respective representatives and the parties hereto shall agree upon the Third Arbitrator or before the ..... day of ....., 1970.

BY THE COURT:

....., *J.*

Exhibit A Annexed to Petition.

Exhibit A.

FORM OF AGREEMENT
CONTRACT NO. 39
NEW BRIGHTON FILTER PLANT
MECHANICAL WORK

Beaver Falls Municipal Authority

THIS AGREEMENT, made the 28th day of September in the year Nineteen Hundred Sixty-seven (1967), by and between Remsco Associates, Inc., Matawan, New Jersey hereinafter called the contractor and the Beaver Falls Municipal Authority, hereinafter called the owner.

WITNESSETH, that the Contractor and the Owner for the considerations named agree as follows:

ARTICLE I. SCOPE OF WORK: The Contractor shall furnish all the materials and perform all the work and do all else necessary to complete Contract No. 39, Mechanical Work, New Brighton Filter Plant, as shown on the drawings and described in the specifications, all addenda or bulletins thereto as prepared by Michael Baker, Jr., Inc., Consulting Engineers, Rochester, Pennsylvania, acting as and in these contract documents entitled the Engineer, and shall do everything required by this Agreement and the Contract Documents.

ARTICLE II. THE CONTRACT SUM: The Owner shall pay the contractor for the performance of Contract No. 39, Mechanical Work, New Brighton Filter Plant, subject to additions and deductions provided herein, in current funds as follows:

The aggregate of the amounts determined by applying the lump sum prices, submitted in the proposal, to the measured quantities of materials, the estimated total amount being Seven Hundred Eighty-Six Thousand and Two Hundred Dollars ($786,200.00).

ARTICLE III. COMMENCEMENT OF WORK AND TIME OF COMPLETION. The work to be performed under this contract shall be commenced on a date to be specified in a written order of the Owner of Engineer and shall be fully completed as set forth in the Instructions to Bidders, Paragraph B-8, page 3—B. Time is of the essence in this Agreement.

ARTICLE IV. LIQUIDATED DAMAGES: Should the Contractor fail to complete the work before the date set for completion, the Owner may deduct from the monies due the Contractor, the sum of Fifty Dollars ($50.00) for each Calendar day thereafter that the work remains uncompleted, which sum is agreed upon as the proper measure of liquidated damages which the Owner will sustain per diem by the failure of the Contractor to complete work at the time stipulated and this sum is not to be construed as in any sense penalty.

ARTICLE V. EXTENSION OF TIME: NO WAIVER: Should the Contractor be delayed in the completion of his work by reason of unforseeable causes beyond his control and without his fault or negligence, including, but not restricted to acts of God or of the public enemy, acts or neglect of the Owner, acts or neglect of any other contractor, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, the period specified for completion of the work shall be extended by such reasonable time as shall be determined by the Engineer.

No such extension of time shall be deemed a waiver by the Owner of his right to terminate the contract for abandonment or delay by the Contractor as provided in the Contract Documents or relieve the Contractor from full responsibility for performance of his obligations hereunder.

ARTICLE VI. PAYMENTS:

(a) Payment shall be made in accordance with Section 34 of the General Conditions.

(b) The term "Work Performed" in Section 34 of the General Conditions shall be construed to include only material incorporated into the project, and work performed satisfactorily to the Engineer.

ARTICLE VII. CONTRACT PROVISIONS: The Contractor hereby stipulates and agrees that he shall pay no less than the wage rates as determined in the decision of the Secretary of Labor and Industry, which wage rates are set out in the specifications, Section 12, of the Special Conditions, Minimum Wage Rates, and that he shall comply with the conditions of the Pennsylvania Prevailing Wage Act approved August 15, 1961 (Act No. 442) and the Regulations issued pursuant thereto.

ARTICLE VIII. CONTRACT PROVISIONS: The following documents, referred to herein as the Contract Documents, are incorporated herein and made a part hereof by reference thereto:

(1)	Form of Proposal	(Pps 4-C through 6-C)
(2)	General Conditions	(Pps 1-D through 21-D)
(3)	Special Conditions	(Pps 21-D through 27-D)
(4)	Technical Provisions	(Pps M-1 through M-113)

(5) Addena and Bulletins (Enumerated Below)
(6) Drawings (Enumerated Below)

This Agreement together with these documents form the contract. These documents are as fully a part of the contract as if thereto attached or herein repeated. The following is an enumeration of the drawings:

Exhibit A Annexed to Petition.

(Marginal Numbers Illegible)

1	———	Index and General Location Plan
2	38,39	Test Hole Log
3	38,39	Schematic Hydraulic Profile
4	38	Site Grading Plan
5	38	Typical Sections and Pavement Details
6	39	Exterior and Inter-Unit Piping
7	39	Exterior Piping Profiles
8	39	Exterior Piping Profiles
9	39	Exterior Piping Profiles
10	39	Plan and Profile—Waste Water Drain
11	38,39	Plan and Details—Waste Water Lagoon
12	38,39	Head House—Sub Basement Plan
13	38,39	Head House—Basement Plan
14	38,39	Head House—First Floor Plan
15	38,39	Head House—Roof Plan and Schedules
16	38,39	Head House—Elevations
17	38,39	Head House—Building Section A-A
18	38,39	Head House—Building Section B-B
19	38	Head House—Wall Sections
20	38	Head House—Stairs and Details
21	39	Schematic Alum and Chlorine Feed
22	39	Chemical Feed Facilities—Head House
23	39	Head House—Plant Control Console Details
24	39	Head House—Plant Instrumentation
25	38,39	Sedimentation and Floc Basin—Plan
26	38,39	Sedimentation and Floc Basin—Sections
27	38,39	Sedimentation and Floc Basin—Section
28	38,39	Sedimentation and Floc Basin—Section
29	38	Sedimentation and Floc Basin—Effluent Launder Details
30	38	Sedimentation and Floc Basin—Reinforcing Details
31	38	Sedimentation and Floc Basin—Reinforcing Details
32	38,39	Filter House—Part Plan
33	38,39	Filter-Pump House—Roof Plan
34	38,39	Filter-Pump House—Elevations
35	38,39	Filter-Pump House—Building Section
36	38	Filter-Pump House—Wall Sections and Details
37	39	Filter-Pump House—(Mech.) Sectional Pipe Gallery Plan
38	38,39	Filter-Pump House—Sections
39	38,39	Filter-Pump House—Sections
40	38,39	Filter-Pump House—High Service Pump House-Mechanical Plan and Section

Exhibit A Annexed to Petition.

(Marginal Numbers Illegible)

41	39	Filter-Pump House—Wash Water Trough Details
42	39	Filter-Pump House—Filter Control Console Details
43	38,39	Plan—500,000 Gallon Clearwell
44	38,39	Clearwell Sections
45	38,39	Clearwell Valve Pits
46	39,43	150,000 Gallon Wash Water Reservoir
47	39	Raw Water Intake Modifications
48	39	Raw Water Intake Modifications
49 (S-1)	38	Head House—Foundation Plan and Sections
50 (S-2)	38	Head House—Sub Basement Plan and Sections
(S-3)	38	Head House Basement Framing Plan & Sections
(S-4)	38	Head House First Floor Framing Plan & Sections
(S-5)	38	Head House Roof Framing Plan & Details
(S-6)	38	Head House Beam Schedule & Details
(S-7)	38	Head House Col. & Footing Schedule & Details
(S-8)	38	Head House, Filter House Bridge Sections & Elevations
(S-9)	38	Filter House Foundation Plan & Sections
(S-10)	38	Filter House First Floor Framing & Sections
(S-11)	38	Filter House Sections
(S-12)	38	Filter House Roof Framing Plan & Sections
(S-13)	38	Pump House Floor & Pit Framing Plan
(S-14)	38	Pump House Framing Plan Sections & Schedule
(S-15)	38	Clearwell Sectional Plan & Sections
(HVAC-1)	40	Head House First Floor Plan & Sections
(HVAC-2)	40	Head House Basement Plan & Sections
(HVAC-3)	40	Head House Sub-basement Plan, Section & Roof Plan
(HVAC-4)	40	Head House Boiler Room Plan & Sections & Section 1-1
(HVAC-5)	40	Equipment Schedules, Head House & Filter House
(HVAC-6)	40	Filter House, Operating Floor, Part Plan
(HVAC-7)	40	Filter House—Pump House First Floor, Plan, Roof Plan and Mechanical Equipment Room—Plan & Sections
(HVAC-8)	41	Filter House, Pipe Gallery, Sections & Pump House Section
(P-1)	41	Head House, Sub-basement, Floor & Roof Plan
(P-2)	41	Head House, Basement Floor Plan
(P-3)	41	Head House, First Floor Plan
(P-4)	41	Filter House, Basement Floor Part Plan
(P-5)	41	Filter House, First Floor Part Plan
(P-6)	41	Filter and Pump House—Part Plans & Roof Plan
(E-1)	42	Head House, Sub-basement Plan
(E-2)	42	Head House, Basement Floor Plan
(E-3)	42	Head House, First Floor & Pent House Plans

Exhibit A Annexed to Petition.

(Marginal Numbers Illegible)

(E-4)	42	Sedimentation Basin, Plan
(E-5)	42	Filter House, Pump Room & Filter Gallery
(E-6)	42	Filter House, Filter Gallery Sections & Details
(E-7)	42	Filter House, Pump House Gallery & Details
(E-8)	42	Filter House, Part Plan
(E-9)	42	Control Wiring Diagram
(E-10)	42	Raw Water Pumping Station Plans & Details
(E-11)	42	Electrical Site Plan

Standard Drawings bound with the Specifications:

SP-1B Typical Catch Basin Details
SP-3 General Reinforcing Notes
SP-5 Type "D" Endwall
SP-7 Concrete Pier
SP-16 Grating Detail
SP-17 T-Rail Detail
SP-22 Construction Joint Detail
SP-24 Standard Hydrant Detail
SP-27 Blocking Details
S-46 48" Reinforced Concrete Precast Manhole
SP-48 Typical Project Sign

The following is an enumeration of Addenda or Bulletins:

Addendum No. 1—Dated August 25, 1967
Addendum No. 2—Dated September 8, 1967
Addendum No. 3—Dated September 20, 1967
Addendum No. 4—Dated September 20, 1967

Exhibit A Annexed to Petition.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in four (4) counterparts the day and year as above written.

REMSCO ASSOCIATES,
INCORPORATED,
(Illegible),
Contractor.

WITNESS:
Richard (Illegible)
William F. (Illegible)

BEAVER FALLS MUNICIPAL
AUTHORITY,
Roy M. McDonald,
Chairman.

ATTEST:
John D. Ray,
Secretary.

---

* * *

knowledge or information the releases and receipts include all the labor and material for which a lien could be filed; but the Contractor may, if any Sub-contractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner, to indemnify him against any lien. If any lien remains

unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

45. *CONTRACTOR'S CLAIMS*

Neither the Contractor nor the Surety shall be entitled to present any claim or claims to the Owner either during the prosecution of the work or upon completion of the contract, for additional compensation for any work performed which was not covered by the removed drawings, specifications and/or contract, or for any other cause, unless he shall give the Owner due notice of his intention to present such claim or claims as hereinafter designated.

The written notice, as above required, must have been given to the Engineer prior to the time the Contractor shall have performed such work or that portion thereof giving rise to the claim or claims for additional compensation; or shall have been given to the Engineer within ten (10) days from the date the Contractor was prevented, either directly or indirectly, by the Owner or his authorized representative, from performing any work provided by the contract, or within ten (10) days from the happening of the event, thing or occurrence giving rise to the alleged claim.

46. *ARBITRATION*

The Engineer's decision upon the amount, quality, acceptability and fitness of the work and materials shall be final and binding upon the Owner and Contractor. However, any dispute, claim, question or case involving extension of time or financial considerations, if no agreement regarding such is

reached, shall be referred to a Board of Arbitration composed of a representative of the Owner, a representative of the Contractor and a third representative agreed to by the first two representatives named. The decision and award, if any, shall be final, binding and conclusive upon all parties without exception or appeal; and all right or rights of any action at law or in equity under or by virtue of this contract and all matters connected with it and relative thereto are hereby expressly waived. The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the proceedings upon either or both parties.

47. *ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE*

The acceptance by the Contractor of the final payment shall be and shall operate as a release to the Owner of all claims and of all liability to the Contractor for all things done or furnished in connection with this work and for

* * *

Exhibit B.

LETTER OF NOVEMBER 12, 1969.

November 12, 1969.

Mr. J. David Ray,
Attorney-at-Law,
640 Fourth Street,
Beaver, Pennsylvania. 15009.

Exhibit B annexed to Petition.

Re: Beaver Falls Municipal Authority
Contract 39-Job 617-67.

Dear Dave:

I am writing in regard to your letter dated October 7, 1969, to Remsco Associates, a copy of which you sent to me under your date of October 7, 1969.

Remsco Associates have retained me and Rex Downie as attorneys for them in connection with this case.

After checking the contract thoroughly, we are of the opinion that Paragraph Twenty-nine (29) "Mutual Responsibility of Contractors" is not controlling in the demand made by Remsco Associates. For that reason this letter will constitute an immediate demand upon the Authority for binding arbitration under the terms of Paragraph Forty-six (46) of the contract.

Yours very truly,

LEDEBUR, STEWARD AND
McCLAIN,

By: .....

EJM:TCH.

APPENDIX B.

Petition for Order Directing Arbitration.

IN THE COURT OF COMMON PLEAS

of Beaver County, Pennsylvania

REMSCO ASSOCIATES INCORPORATED,
a New Jersey Corporation,

Petitioner,

vs.

BEAVER FALLS MUNICIPAL AUTHORITY,

Respondents.

No. ..... of 1970

To the Honorable the Judges of said Court:

NOW COMES REMSCO ASSOCIATES INCORPORATED, by its undersigned Attorneys, with the following Petition and prayer:

1. That on the 29th day of January, 1970, your Petitioners filed with your Honorable Court a Petition pursuant to the Arbitration Act of April 25, 1927, having effected service of the same upon the Respondents according to law.

2. That on the same date your Honorable Court issued a Rule upon the Beaver Falls Municipal Authority to show

cause why it should not proceed with Arbitration, the Rule being returnable to the 18th day of Feburary, 1970.

3. That the Statute under which your Petitioner is proceeding provides as follows:

> "The Court shall hear and determine the matter upon the Petition and Answer and Depositions, or, after hearing of the parties in open Court, as the Court may determine; and the Court, upon being satisfied that the making of the Agreement for Arbitration or the failure to comply therewith is not at issue, the Court shall make an Order directing the parties to proceed to Arbitration in accordance with the terms of the Agreement. If the making of the arbitration agreement, or the failure, neglect, or refusal to perform the same, be at issue, the Court shall proceed summarily to the trial thereof. 1927, April 25, P.L. 381, No. 248 § 3. 5 Purdons Statutes § 163.

4. Respondents have not brought into issue the existence of the Agreement and the refusal to arbitrate thereunder.

5. That your counsel for the Petitioner has notified counsel for the Respondent of the presentation of this Petition, having provided him with a copy of the same.

WHEREFORE your Petitioner prays your Honorable Court to enter an Order directing the parties hereto to proceed with arbitration in accordance with the contract between Remsco Associates Incorporated and the Beaver Falls Municipal Authority.

And he will ever pray.

EDWARD J. McCLAIN, ESQ.,
s/ REX DOWNIE, JR., ESQ.,
Attorneys for Petitioner.

Affidavit.

Commonwealth of Pennsylvania,
County of Beaver. } ss.:

Before me the undersigned authority appeared one known to me or satisfactorily identified to me as REX DOWNIE, JR., ESQ., who, being duly sworn according to law, did depose and say that the facts set forth in the within Petition and Answer to Preliminary Objections are true and correct to the best of his knowledge, information and belief, and that he executes this Affidavit for the reason that insufficient time exists to obtain execution by his client the Remsco Associates Incorporated.

And further deponent saith not.

s/ REX DOWNIE, JR., ESQ.

Sworn to and subscribed
before me this .....
day of ....., 1970

.....